

REMARKS

Applicants' agent wishes to thank the Examiner for the telephonic clarification of the status of the application and for re-mailing the Petition Decision that was mailed to an incorrect address in June 2002 and returned to the Office as non-deliverable. Applicants' agent also wishes to thank the Examiner for the assistance in ensuring that the change of address submitted to the Office in April 2002 is now properly recorded and will be used for future communications from the Office.

Applicants' agent especially wishes to thank the Examiner for the helpful explanation of the intention and details of the requirement to elect a single species for examination that was presented in the aforementioned Office Action of 30 November 2000.

Amendment to Specification

A single-sentence paragraph containing the applicants' definition of the term "disposable" has been amended into the specification in order to ensure that this definition is readily available to a reader of the specification. This sentence was disclosed in the original specification of the subject application by way of the incorporation by reference of U.S. Patent 5,906,602 to Weber et al., issued 25 May 1999, where it is found in column 4 at lines 22 through 28.

Amendments to Claims

Claim 11 has been amended to change the opening of the preamble from "An absorbent article..." to "A disposable absorbent article..." The preambles of all of the other pending claims have been changed to read "The disposable absorbent article..." in order to conform their wording to the amended wording of Claim 11, from which they depend. This amendment is supported by the originally filed disclosure in the subject application, including on page 1 at line 6, on page 6 at line 5, on page 7 at line 10, and in at least twenty other places in the specification.

Claim 33 has also been amended to correct a typographical error by deleting an unnecessary semicolon in the phrase "the first absorbent core component[;] and the backsheet..."

Pending Claims

In the Office Action Summary, the Examiner listed 11-12, 14, 17, 20, 32-33, 37-39, 43-44, and 82-89 as being subject to the restriction or election requirement. However, applicants' agent respectfully draws the Examiner's attention to the fact that Claim 14 was cancelled in the Preliminary Amendment submitted with the CPA Request on 1 September 2000 and therefore, after that Preliminary Amendment, only Claims 11, 12, 17, 20, 32, 33, 37 through 39, 43, 44, and 82 through 89 remained pending.

In order to ensure that the claims being examined reflect all of the amendments affecting the claims to date, applicants' agent is herewith submitting a clean version of the entire set of pending claims, in accordance with 37 CFR 1.121(c)(3). Applicants' agent believes that the herewith submitted set of claims accurately accounts for all

Application No. 08/828,005

additions, cancellations, and amendments of the claims that appear in the applicants' file of the subject application. If the Examiner identifies any discrepancy between the herewith submitted set of claims and those in the Office file, applicants' agent respectfully requests the opportunity to help to resolve the discrepancy.

In addition to the clean version of the entire set of pending claims, applicants' agent respectfully submits the following listing of the most recent actions relative to each claim as found in the applicants' file of the subject application, in the hope that it will prove useful to the Examiner in ensuring that the Office file is complete.

Claims 1 through 10 – Not Currently Pending: Cancelled in response to Office action in June 1998.

Claims 11 and 12 – Currently Pending: Amended in Preliminary Amendment in September 2000 and in this response.

Claim 13 – Not Currently Pending: Cancelled in Preliminary Amendment in November 1998.

Claim 14 – Not Currently Pending: Cancelled in Preliminary Amendment in September 2000.

Claim 15 – Not Currently Pending: Cancelled in Preliminary Amendment in November 1998.

Claim 16 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claim 17 – Currently Pending: Amended in Preliminary Amendment in September 2000 and in this response.

Claims 18 and 19 – Not Currently Pending: Cancelled in Preliminary Amendment in November 1998.

Claim 20 – Currently Pending: Amended in Preliminary Amendment in September 2000 and in this response.

Claims 21 and 22 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claims 23 through 27 – Not Currently Pending: Cancelled in response to Office action in June 1998.

Claims 28 through 31 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claim 32 – Currently Pending: Amended in Preliminary Amendment in September 2000 and in this response.

Claim 33 – Currently Pending: Added in Preliminary Amendment in November 1998 and amended in this response.

Application No. 08/828,005

Claims 34 through 36 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claims 37 through 39 – Currently Pending: Amended in Preliminary Amendment in September 2000 and in this response.

Claims 40 through 42 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claims 43 and 44 – Currently Pending: Added in Preliminary Amendment in November 1998 and amended in this response.

Claims 45 through 81 – Not Currently Pending: Cancelled in response to Office action in March 2000.

Claims 82 through 89 – Currently Pending: Added in Preliminary Amendment in September 2000 and amended in this response.

Requirement for Election of Species

In the Office Action of 30 November 2000, the Examiner required the applicants under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner also stated that Claims 1 and 33 are generic.

Applicants' agent respectfully draws the Examiner's attention to the fact that Claim 1 is not currently pending and requests the Examiner to clarify whether the intention was to refer to Claim 11 as being generic. Because Claim 11 is independent and is the lowest numbered currently pending claim, applicants' agent addresses various aspects of the election of a species in this response as if it was the Examiner's intention to refer to Claim 11 as being generic. If the Examiner's intention was otherwise, applicants' agent respectfully requests an opportunity to reconsider and modify this response on the correct basis.

Applicants' agent also respectfully draws the Examiner's attention to the fact that Claim 33 depends from Claim 11 and requests the Examiner to clarify the way in which this dependent claim is generic and to which claims it is generic. Perhaps this clarification will include the clarification, requested in the paragraph above, regarding whether the Examiner's intention was to refer to Claim 11, rather than previously cancelled Claim 1, as being generic. However, at this time, applicants' agent is not certain of the Examiner's intention with respect to these issues and, therefore, requests their clarification.

Applicants' agent respectfully traverses the requirement to elect a single species on the ground that it would not present an undue burden on the Examiner to examine the pending claims without such an election. Nevertheless, in order to provide a complete reply, the required election is made as detailed below.

Definition of Species

The Examiner stated that the subject application contains claims directed to the following patentably distinct species of the claimed invention:

Either

- A. the species of Figures 9-10 or
- B. the species of Figures 11-12 or
- C. the species of Figures 11 and 13

and

- 1. one of the acquisition layer compositions and
- 2. one of the acquisition/distribution layer compositions and
- 3. one of the second absorbent core component materials and
- 4. one of the third absorbent core component materials and
- 5. one of the storage/redistribution layer compositions.

Election of Species

Applicants hereby elect the following species for examination on the merits, using the Examiner's terminology diagrammed above:

- A. The species of Figures 9 – 10

and

- 1. an acquisition layer comprising fibrous nonwoven materials, and
- 2. an acquisition/distribution layer comprising fibrous nonwoven materials, and
- 3. a second absorbent core component comprising absorbent gelling materials, and
- 4. a third absorbent core component comprising absorbent gelling materials, and
- 5. a storage/redistribution layer comprising open-celled polymeric foam materials.

Claims Readable on Elected Species

Applicants' agent avers that all of the pending claims, i.e., Claims 11, 12, 17, 20, 32, 33, 37 through 39, 43, 44, and 82 through 89, read on the elected species. It is specifically noted that claims reciting Markush groups containing the materials selected in the elected species read on the elected species.

Applicants' agent also avers that at least Claim 11 is generic and notes that all of the other pending claims, i.e., Claims 12, 17, 20, 32, 33, 37 through 39, 43, 44, and 82 through 89, depend from Claim 11 and, therefore, include all the limitations of Claim 11.

Application No. 08/828,005

"Marcus" Reference Not Listed In Notice of References Cited

Applicants' agent respectfully draws the Examiner's attention to the fact that a "Marcus" reference has been referenced in claim rejections in the Office actions of August 1998, November 1999, and June 2000, but has apparently not been listed on any Notice of References Cited, Form PTO-892. In fact, applicants' agent has been unable to find a patent number for this reference in any written communication from the Examiner. Instead, from its first occurrence on page 4 of the Office action mailed on 24 August 1998, this reference has apparently been referenced only by the name "Marcus".

The Examiner is requested to list the "Marcus" reference and its identification on a Notice of References Cited, Form PTO-892, in the next communication.

SUMMARY OF THIS RESPONSE

1. The specification has been amended to recite a sentence from an incorporated reference.
2. The claims have been amended to recite "disposable absorbent article" in their preambles.
3. The listing and content of all pending claims has been reviewed.
4. A single species has been elected for prosecution on the merits, in accordance with the Examiner's requirement.
5. The Examiner has been requested to list a reference cited in previous rejections but never identified by the Examiner by document number.

No new matter has been added by this response.

The issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

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